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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,033	08/26/2002	Hartmut Lang	033033-007	9437

21839 7590 09/10/2004

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EXAMINER

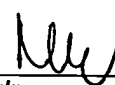
FOX, CHARLES A

ART UNIT PAPER NUMBER

3652

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/089,033	Applicant(s) LANG, HARTMUT	
	Examiner Charles A. Fox	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 17-20, 22-25, 28 and 29 is/are rejected.
- 7) ☒ Claim(s) 13-16, 21, 26 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 May 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This application has been reassigned to examiner Charles A. Fox


Claim Warning

Applicant is advised that should claim 2 be found allowable, claim 3 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). The phrase "integral manner" in claim 3 does not distinguish it from claim 2 as any part that are connected together meet the definition of being integral. As such the phrase "integral manner" is inherent in claim 2.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

 Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is not clear whether the applicant is ~~is~~ trying to say the shelf bays within a group are different sized or that different groups of shelf bays are of differing size.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The longitudinal direction of the shelf bays has been defined and by default the lateral direction of said shelf bays is also defined as being at a 90

degree angle to the longitudinal direction in the horizontal plane. There are no openings in that direction between the shelf bays, therefore the examiner can not determine what exactly is being claimed by the applicant. In the art rejection of claim 7 below the claim is given its literal meaning based upon the applicants definition of the longitudinal direction.

Claims 29 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The size of the product support is driven by the length of the shelf bay and the location of the retrieval device. The size of the product does not affect this length, but merely how many products may be placed on any one support. The size of a medium product is also unknown as it is given as the mean of all products, as the mix of products is not known therefore the size of a medium product is not ascertainable. If the applicant wants to provide a size range for medium products in the claim then as long as the range is not new matter then the claims would be definite. For example "wherein said medium product has a length of between 3 and 5 cm. And a diameter of 2-4 cm. As the claims stand now there is no way to accurately estimate the size of a medium product without undue experimentation, as such the claims are indefinite. As the size of a medium product is impossible for the examiner to determine with the given information, these claims have not been treated on the merits at this time.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3652

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5,7-12,17-20,22-25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Duncan et al., Gruner, and further in view of Anderson et al. In regards to claim 1 Duncan et al. US 4,406,570 teaches a shelf storage facility comprising:

a plurality of shelf bays within a rack;

each bay presenting a shelf with upper side providing a guiding means fixed to the shelf in the longitudinal direction of said shelf bay;

M a storage and retrieval device designed for being moved in front of each of the shelf bays. Duncan does not teach providing product supports or a finger on the retrieval device.

Gruner DE 19741670 teaches a storage device comprising:

a plurality of shelf bays(141...143);

a product support (10) with an open face in the upward direction for holding a product as it is stored and retrieved from the shelf bays;

said support and shelf bay being complimentary to one another;

said support is supported for displacement in the longitudinal direction.

Gruner also does not teach a finger on the retrieval device.

Anderson et al. US 5,106,259 teaches a rack system comprising:

a plurality of vertically arranged shelf bays (15);

a product support (11) designed to be held in each shelf bay;

a device (31) for placing and retrieving said supports from said shelf bays;
said device having a finger(59) for engaging said support for causing displacement in a longitudinal direction;
a retaining finger (68) is further provided for insertion into the open top of said support during displacement thereof.

It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Duncan et al. with a product support as taught by Gruner and to further provide a retention finger as taught by Anderson et al. in order to allow preloaded product supports to be stored and to access said supports for displacement in a manner that positively locks the support to the retrieval device thereby allowing the support to be displaced more accurately.

In regards to claims 2 -5 Duncan further teaches that said shelf bays are connected to each other via members (26a-d) in a horizontal plane, and that all shelf bays are of the same depth along the longitudinal direction.

In regards to claim 7 Duncan also teaches that a respective shelf bat is open in a lateral direction to respective lateral shelf bays. See figure 1.

In regards to claims 8-12,19,20,22-25 and 28 Gruner further teaches:
that guide means on said shelf are formed by the geometry of the shelf;
said support is designed to rest upon said shelf;
said shelf having a guiding channel with two plane surfaces forming a V-shaped configuration relative to each other in an integral manner;
wherein all supports have the same length.

In regards to claim 17 Anderson also teaches that said shelf bays are disposed in a rack that is movable.

Regarding claim 18 Duncan et al. further teach two shelf racks disposed at a distance from each other with the storage and retrieval device located there between.

Response to Amendment

The amendments filed on May 18, 2004 have been entered into the record.

Allowable Subject Matter

Claims 13-16, 21, 26 and 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. In regards to claims 13 and 26 the closest prior art of Gruner does not teach or suggest that the two plane surfaces form an angle of 90 degrees.

In regards to claim 14 the closest prior art of Duncan et al. does not teach or suggest making the shelf bays out of a corrugated sheet.

In regards to claim 21 the closest prior art of Gruner and Anderson et al. do not teach or suggest a device to align the products upon the support.

In regards to claim 27 the closest prior art of Gruner does not teach or suggest the length of the product support be longer than said shelf bay.

Response to Arguments

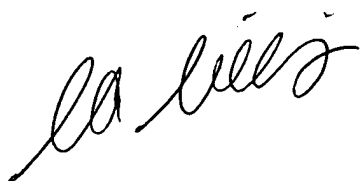
Applicant's arguments with respect to claims 1-30 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 703-605-4294. The examiner can normally be reached between 7:00-5:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CAF
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9-7-04



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SUPERVISORY PATENT EXAMINER
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